

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID T. GILCHRIST,

No. 3:14-cv-5066

Plaintiff,

DEFENDANT'S NOTICE OF REMOVAL
OF ACTION PURSUANT TO
28 U.S.C. §§ 1331, 1367, 1441, AND 1446

CAPITAL ONE SERVICES, LLC,

(Removed from the Small Claims
Department, Cowlitz County District Court
Case No. 13 S 294)

PLEASE TAKE NOTICE that defendant Capital One Services, LLC (“Capital One”), hereby removes to this Court the state-court action described below. In support of its removal, Capital One states as follows:

I. INTRODUCTION AND STATEMENT OF FACTS

On December 27, 2013, plaintiff David T. Gilchrist filed a lawsuit in the Small Claims Department, Cowlitz County District Court, Case No. 13 S 294. *See*, Declaration of Steven A. Miller in Support of Defendant's Notice of Removal, Exhibit A. Capital One has not been served with a copy of Plaintiff's Complaint. On January 21, 2014, counsel for Capital One

DEFENDANT'S NOTICE OF REMOVAL - 1

Case No. 3:14-cv-5066
m46886-2107543.docx

GRAHAM & DUNN PC
Pier 70 • 2801 Alaskan Way • Suite 300
Seattle, Washington 98121-1128
(206) 624-8300 • (206) 340-9599 Fax

1 contacted the Cowlitz County District Court and obtained a copy of the Claim filed against
2 Capital One on December 27, 2013, which states claims of “state statutory violations and
3 TCPA violations.” *See*, Declaration of Steven A. Miller, Exhibit A.

4 On December 11, 2013, and December 19, 2013, Plaintiff filed two other separate
5 complaints against Capital One with the Cowlitz County District Court, Small Claim Nos. 13
6 S 282 and 13 S 286. On January 9, 2014, both actions were removed to the Western District
7 of Washington (Tacoma), Case Nos. 3:14-cv-05020-RBL and 3:14-cv-05021-RBL. Both of
8 Plaintiff’s previous complaints against Capital One alleged violations of the Telephone
9 Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. (Complaints ¶¶ 37-38.) The complaints
10 also alleged violations of the Fair Debt Collections Practice Act (FDCPA), 15 U.S.C.
11 §§ 1692d, 1692e(11), and the Washington Consumer Protection Act (“WCPA”), Wash. Rev.
12 Code §§ 19.86.020, 19.86.093, 19.16.250. (Complaints ¶¶ 39-41, 42-47.) In this action
13 Plaintiff has not provided as much detail as in his first two complaints against Capital One,
14 but the Claim makes clear that Plaintiff again brings this action against Capital One for
15 violations of the Telephone Consumer Protection Act (“TCPA”).

16 Capital One files this Notice of Removal on January 23, 2014. The Notice of Removal
17 is timely filed under 28 U.S.C. § 1446(b) because it has been filed “within 30 days after the
18 receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting
19 forth the claim for relief upon which such action or proceeding is based.” *Id.* //

20
21
22
23
DEFENDANT’S NOTICE OF REMOVAL – 2

Case No. 3:14-cv-5066
m46886-2107543.docx

GRAHAM & DUNN PC
Pier 70 • 2801 Alaskan Way • Suite 300
Seattle, Washington 98121-1128
(206) 624-8300 • (206) 340-9599 Fax

II. BASIS FOR REMOVAL

A. There Is Federal Question Jurisdiction Under 28 U.S.C. § 1331.

This Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331. The TCPA, 47 U.S.C. § 227, is federal law, over which the federal courts have federal question jurisdiction. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 753 (2012).

B. There is Supplemental Jurisdiction Under 28 U.S.C. § 1337.

This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1337, because Plaintiff's allegations arise from and are part of the same case or controversy as the federal question. Therefore, this action is one which can be removed to this Court by Capital One under 28 U.S.C. § 1441(a) and (c).

C. Notice of Removal Was Timely Under 28 U.S.C. § 1446(b).

Capital One first received a copy of the Claim filed by Plaintiff no earlier than January 21, 2014. *See*, Declaration of Steven A. Miller, ¶ 2. This Notice of Removal, which has been filed less than 30 days later, is thus timely under 28 U.S.C. § 1446(b).

D. Capital One's Notice of Removal Complies With the Applicable Local Rules and
Venue Is Proper in the Western District of Washington Under 28 U.S.C. § 128(b).

This Notice of Removal complies with all applicable Federal Rules of Civil Procedure and Local Rules. Venue is proper in this District under 28 U.S.C. §§ 128(b) and 1441(a) because this District encompasses Cowlitz County, wherein Plaintiff filed the state court action being removed. Capital One is serving Plaintiff with copies of this Notice of Removal and will serve notice of the removal upon the Clerk of the Court in the Small Claims Department, Cowlitz County District Court.

1 Capital One expressly reserves its right to raise all defenses and objections to
2 Plaintiff's claims after the action is removed to this Court.

3 DATED this 23rd day of January, 2014.

4
5 GRAHAM & DUNN PC

6 By: *s/ Steven A. Miller*
7 Steven A. Miller, WSBA # 30388
Email: smiller@grahamdunn.com

8 Attorneys for Defendant Capital One
9 Services, LLC
Pier 70
10 2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
Telephone: (206) 624-8300
11 Facsimile: (206) 340-9599

12
13
14
15
16
17
18
19
20
21
22
23
DEFENDANT'S NOTICE OF REMOVAL – 4

Case No. 3:14-cv-5066
m46886-2107543.docx

GRAHAM & DUNN PC
Pier 70 • 2801 Alaskan Way • Suite 300
Seattle, Washington 98121-1128
(206) 624-8300 • (206) 340-9599 Fax

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing DEFENDANT'S
NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. 1331, 1367, 1441, AND
1446 on the following individuals in the manner indicated:

David T. Gilchrist
457 21st Avenue
Longview, WA 98632

(X) Via U.S. Certified & First Class Mail
() Via Facsimile
() Via Hand Delivery
() Via ECF

SIGNED this 23rd day of January, 2014, at Seattle, Washington.

s/ Valerie K. Losey
Valerie K. Losey, Legal Assistant

DEFENDANT'S NOTICE OF REMOVAL - 5

GRAHAM & DUNN PC
Pier 70 • 2801 Alaskan Way • Suite 300
Seattle, Washington 98121-1128
(206) 624-8300 • (206) 340-9599 Fax